



Department of Financial Services

FAIRFAX COUNTY
PUBLIC SCHOOLS

Office of Procurement Services
8115 Gatehouse Road, Suite 4400
Falls Church, Virginia 22042-1203
Telephone: 571-423-3550

NOTE: Fairfax County Public Schools conducts all procurement activities in accordance with delegated authority from the Purchasing Agent of Fairfax County Government. Bids and proposals in response to FCPS solicitations must be delivered to the address above on or before the date and time stipulated in the solicitation.

IFB 2000001895

Prepared Delivered Meals for Family & Early Childhood Education Program / Head Start

All questions pertaining to this IFB must be submitted in writing to the contract administrator at Tiffany.Evans@fcps.edu no later than Wednesday, April 27, 2016 at 10:00 A.M. Eastern Time.



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ISSUE DATE: April 13, 2016	INVITATION FOR BID: IFB 2000001895	TITLE: Prepared Delivered Meals for Family & Early Childhood Education Program/ Head Start
DEPARTMENT: Instructional Services	DUE DATE/TIME: May 12, 2016 / 02:00 p.m.	CONTRACT ADMINISTRATOR: Tiffany Evans / 571-423-3599 or; tiffany.evans@fcps.edu

Bids - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the bid is accepted, to furnish items or services for which prices are quoted, at the price set opposite each item, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No: or

Federal Social Security No.(Sole
Proprietor):

Prompt Payment Discount: ___% for payment within ___ days/net ___ days

State Corporation Commission (SCC)
Identification No.:

By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Appendix B, and by any other relevant certification set forth in Appendix B.

BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE: ☐ LARGE (Y) ☐ SMALL (B)

☐ MINORITY-OWNED SMALL (X) ☐ MINORITY OWNED LARGE (V) ☐ WOMEN-OWNED SMALL (C)

☐ WOMEN OWNED LARGE (A) ☐ NON PROFIT (9)

CHECK ONE: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

State in which Incorporated: _____

Vendor Legally Authorized
Signature

Date

Print Name and Title

Sealed bids subject to terms and conditions of this invitation will be received by the Fairfax County Purchasing Agent at 8115 Gatehouse Road, Suite 4400, Falls Church, Virginia 22042-1203 on the due date and time specified, and then publicly opened and read.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



SPECIAL PROVISIONS

1. SCOPE:

1.1. The purpose of this solicitation is to establish a term contract(s) for the provision of nutritious meals and snacks for Fairfax County Public Schools (FCPS) Office of Family and Early Childhood Education Program/Head Start (FECEP/HS) classrooms existing in Area 1. FECEP/HS is in need of a firm(s) to prepare meals for children one (1) to five (5) years of age. The resulting contract will establish a ready "as required" source for the items listed in this solicitation, and will be available for use by all agencies and activities of Fairfax County Public Schools and Fairfax County Government.

1.2. Bidders are required to include the following with their bid:

- Vendor's legal Authorized Signature (DPSM30 – Cover sheet)
- Appendix B (all sections)
- Addenda, if applicable
- Signed Confidentiality Agreement incorporated in the solicitation as an attachment referenced in Appendix B.
- References from two separate organizations or companies where such services have been performed. Must be similar in size and scope (Reference Technical Specifications 3.3.).
- Bidder's place of business must be within 10 miles of Fairfax County boundary lines.
- School service sites are divided into two sections (Area 1) and (Area 2). Contractor shall service Area 1 (see Appendix B).
- Must have the capability to service FECEP/HS classrooms in Area 1 throughout FCPS for approximately 800 students (referenced in Technical Specification, Appendix B).
- Summary of bidder's product recall policy
- Bidders must submit copies of Food Establishment Inspection Reports from the past three (3) years from the county in which their business resides (Reference Technical Specifications 3.2.).
- Bidder must provide a certificate for the facility that will be used to prepare the meals for the FCPS Family and Early Childhood Education (FECEP/HS).
- Bidder must provide copies of the Certified Food Manager (CFM) certification for person(s) proposed to be on site during all stages of food preparation for the FCPS FECEP/HS) program.
- Bidder shall provide sample monthly menus of meals for each cycle for the following:
 - Child breakfast children ages one (1) to five (5) years old.
 - Child lunch for children ages one (1) to five (5) years old.
 - Child snack for children one (1) to five (5) years old.

Failure to provide these items shall result in rejection of the bid.

2. PERIOD OF CONTRACT:

2.1. The period of this contract shall be from the date of award through August 31, 2019.

2.2. Automatic contract renewals are prohibited. This contract may be renewed at the expiration of its term by agreement of both parties. Contract renewals must be authorized by and coordinated through the Office of Procurement Services. FCPS reserves the right to renew the contract for three (3) additional one-year periods.

2.3. Notice of intent to renew will be given to the Contractor in writing by the Office of Procurement Services, normally 60 days before the expiration date of the current contract. (This notice shall not be deemed to commit the County to a contract renewal.)

SPECIAL PROVISIONS

- 2.4. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this Invitation for Bid is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

3. PRICES AND PRICE ADJUSTMENT:

- 3.1. All prices/discounts shall be F.O.B. Destination and shall include all charges that may be imposed in fulfilling the terms of this contract.
- 3.2. If labor rates are requested, the rates specified by the bidder shall include all direct and indirect overhead costs including but not limited to transportation, general and administrative cost, etc. Labor rates will be paid on the basis of time at the site.
- 3.3. The Contractor agrees that for unit price contracts, prices shall remain firm for 365 days. If the price is increased after 365 days, the unit price may be increased only upon approval of a written request to the Purchasing Agent. Upon receipt of the Contractor's request, the County shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.
- 3.4. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.)
- 3.5. The request must be received at least 30 days prior to the effective date and shall become effective only upon approval by the County Purchasing Agent. The increased contract unit price shall not apply to orders received by the Contractor prior to the effective date of the approved increased contract unit price. Orders placed via County Purchase Order, shall be considered to have been received by the Contractor after the fifth (5th) calendar day following the date issuance. The County Purchasing Agent may cancel, without liability to either party, any portion of the contract affected by the requested increase and any materials, supplies or services undelivered at the time of such cancellation.
- 3.6. Price decreases shall be made in accordance with paragraph 43 of the General Conditions and Instructions to Bidders.

4. BACKGROUND:

- 4.1. The Fairfax County Public Schools Family and Early Childhood Education Program/Head Start (FECEP/HS) is administered by the Fairfax County Public Schools Office of Early Childhood and Grant Management. This program must comply with U.S. Department of Health and Human Services regulations for Head Start Programs 45 CFR Part 1304.23 and U.S. Department of Agriculture, Child and Adult Care Food Program

SPECIAL PROVISIONS

(CACFP) regulations for meals 7 CFR Part 226. Program objectives of the Head Start Program include promotions of child wellness through provisions of nutrition services that supplement and complement those of the home and community. FECEP/HS must implement a nutrition program that meets the needs and feeding requirements of children, according to CACFP regulations, including those children with food allergies/intolerances, special dietary needs and or disabilities 45CFR 1304.23 (b)(1). Special dietary needs may result from difficulties in chewing, swallowing, or lack of feeding abilities. Historically, approximately 65 children per year have met the food allergy/intolerances or special dietary needs classification, program wide.

The nutrition program must also serve a variety of healthy foods, including breads and other grain products, vegetables, fruits, meat and meat alternatives (such as eggs, seeds, dry beans, peas and cheese), and fluid milk, in accordance with CACFP meal patterns 7 CFR 226.20. Children are thus introduced to a broad variety of foods, which also considers cultural and ethnic preferences through thoughtful meal planning. FECEP/HS serves children age birth to three in our Early Head Start program and Children three to five in our FECEP/Head Start Program.

- 4.2. Department of Agriculture, Child and Adult Care Food Program (CACFP) Meal Patterns are provided. (Reference Appendix B).

5. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

- 5.1. Authorized individuals will place orders for specific quantities of items covered in the resultant contract, as requirements arise. Please refer to the paragraph entitled, METHOD OF ORDERING.
- 5.2. The quantities specified in this solicitation are estimates only, and are given for the information of bidders and for the purpose of bid evaluation. They do not indicate the actual quantity that will be ordered since the actual volume will depend upon requirements that develop during the contract period. Waiver of ten percent (10%) limitation in paragraph 30, General Conditions and Instructions to Bidders, is acknowledged.

6. DELIVERY/TIME OF PERFORMANCE:

- 6.1. Fairfax County requires that daily delivery be made to the destinations specified in Appendix B – Technical Specifications and Area 1 location sites referenced in Appendix B.
- 6.2. Delivers will be made to various locations referenced in Appendix B and the Technical Specifications.
- 6.3. The County may pick up orders from the vendor when it is in the best interest of the County. In these instances the Contractor shall release the materials only to the designated representatives of the County Agency authorized to place and pick up orders.

7. QUOTATION LIMITATION:

- 7.1. Bidders shall offer only ONE ITEM AND PRICE for each line item bid. No alternatives will be accepted, unless requested by the County. If an "or equal" item is to be bid, the bidder must select the brand and model that meets or exceeds the specified item and submit their bid for that item. A discount price offered for a quantity purchase of the same manufacturer and model would not be considered a limitation; however, only the unit price requested will be considered in award.

SPECIAL PROVISIONS**8. INTERPRETATION OF BID:**

- 8.1. Any questions pertaining to this solicitation shall be directed to:

Tiffany Evans, CPPB, Contract Administrator
 Fairfax County Public Schools
 Office of Procurement Services
 8115 Gatehouse Road, Suite 4400
 Falls Church, Virginia 22042-1203
 Telephone: 571-423-3599
 Email: tiffany.evans@fcps.edu

9. PRODUCT INFORMATION:

- 9.1. The bidder is responsible for clearly and specifically identifying the product being offered and enclosing complete and detailed descriptive literature, catalog cuts and specifications with the bid to enable the County to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid to be considered non-responsive.

10. SUBMISSION OF BIDS:

- 10.1. Each bidder must use the attached Pricing Schedule to submit their bid. All bids must show the manufacturer, style/stock number, delivery time, unit price and total price and/or percentage discount for each item for which a bid is submitted, as applicable. **All bidders must return one (1) original (duly marked), one (1) printed copy, and six (6) USB flash drives with the bid in a searchable "pdf" format. A complete bid should have:**

- a. Cover Sheet (DPSM30), duly signed;
- b. Appendix B (all sections);
- c. Addenda, if applicable;
- d. Signed Confidentiality Agreement incorporated in the solicitation as an attachment referenced in Appendix B.
- e. References from two separate organizations or companies where such services have been performed. Must be similar in size and scope (reference Technical Specifications).
- f. Bidder's place of business must be within 10 miles of Fairfax County boundary lines.
- g. School service sites are divided into two sections (Area 1) and (Area 2). Contractor shall service Area 1 (see Appendix B).
- h. Must have the capability to service FECEP/HS classrooms in Area1 throughout FCPS for approximately 800 students (referenced in Technical Specification, Appendix B).
- i. Summary of bidder's product recall policy
- j. Bidders must submit copies of Food Establishment Inspection Reports from the past three (3) years from the county in which their business resides.
- k. Bidder must provide a certificate for the facility that will be used to prepare the meals for the FCPS Family and Early Childhood Education (FECEP/HS).
- l. Bidder must provide copies of the Certified Food Manager (CFM) certification for person(s) proposed to be on site during all stages of food preparation for the FCPS FECEP/HS) program.

SPECIAL PROVISIONS

- m. Bidder shall provide sample monthly menus of meals for each cycle for the following:
 - o Child breakfast children ages one (1) to five (5) years old.
 - o Child lunch for children ages one (1) to five (5) years old.
 - o Child snack for children one (1) to five (5) years old.
 - n. Completed W9 Form (must be the latest version, per [IRS.gov](https://www.irs.gov)); and
 - o. A notarized statement that the electronic version is a true copy of the original bid.
- 10.2. By executing the Cover Sheet, the bidder acknowledges they have read this solicitation, understand it, and agree to be bound by its terms and conditions. Bids may be mailed or hand delivered to the following location:

Department of Financial Services
 Office of Procurement Services
 8115 Gatehouse Road, Suite 4400
 Falls Church, VA 22042-1203
 Telephone: 571-423-3550

- 10.3. All bids shall be submitted in a sealed envelope or package with the bid number, title, and the bidder's name and address on the outside of such envelope or package.
- 10.4. **BIDS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED FOR CONTRACT AWARD AND SHALL BE RETURNED TO THE BIDDER.**
- 10.5. Bidders are reminded that changes to the bid, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda MUST be signed and submitted to the Office of Procurement Services, 8115 Gatehouse Road, Suite 4400, Falls Church, VA 22042-1203, before the due date/time or must accompany the bid. Notice of addenda will be posted on eVA and the DPSM current solicitation webpage. Bidders are responsible to monitor the web page for the most current addenda at <http://www.fairfaxcounty.gov/solicitation/>.
- 10.6. Bidders are reminded that any bid submitted shall become available in its entirety to public view upon bid opening.
- 11. CONTACT FOR ADMINISTRATION:**
- 11.1. In the event a contract is executed with your firm as a result of this solicitation please indicate the person(s) we may contact for prompt contract administration, in the space provided on Appendix B.
- 12. BID EVALUATION/CONTRACT AWARD:**
- 12.1. The County reserves the right to award the contract in the aggregate, by line item, by section, or by Manufacturer and to make a Primary and Secondary award, based on the best interest of the County.
- 13. CONTRACT INSURANCE PROVISIONS**
- 13.1. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or

SPECIAL PROVISIONS

injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.

- 13.2. The Contractor shall, during the continuance of all work under the contract maintain the following insurance:
 - a. Workers' Compensation and Employer's Liability insurance limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - b. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate including contractual liability, personal and advertising injury, and products and completed operations coverage. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
 - c. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, include property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work will be insured under a standard Automobile Liability policy, or a Comprehensive General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
 - d. Professional Liability/Errors and Omissions coverage responding to Contractor's errors, acts or omissions in the amount of \$1,000,000 per claim and in the aggregate.
- 13.3. Fairfax County Public Schools, the Fairfax County School Board, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess"
- 13.4. Indemnification: Article 63 of the General Conditions and Instruction to Bidders (Appendix A) shall apply.
- 13.5. Additional Requirements
 - a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - b. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from the requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
 - c. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 - d. The contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.

SPECIAL PROVISIONS

- e. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to FCPS on demand.
- f. The contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the FCPS. These certified copies will be sent to the FCPS from the contractor's insurance agent or representative.
 - 1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 day written notice to the FCPS. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
 - 2. Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities provisions of the contract.
 - 3. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
 - 4. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the FCPS. The Contractor shall be as fully responsible to the FCPS for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
 - 5. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
 - 6. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this Contract.
 - 7. If the Contractor delivers services from a County leased facility, the Contractor is required to carry property insurance on all equipment, to include County owned installed and maintained equipment used by the Contractor while in their care, custody and control for use under this contract.
- g. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

- 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or sub-contractor's work under this contract, or

SPECIAL PROVISIONS

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

14. METHOD OF ORDERING:

- 14.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards.
- 14.2. A Purchase Order (PO) may be issued to the Contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 14.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement card is currently a MasterCard. Contractors are encouraged to accept this method of receiving orders.
- 14.4. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
- 14.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

15. CORRESPONDENCE:

- 15.1. All communications between the parties relating to material contractual issues shall be through the Contract Specialist and must be in writing to be deemed binding.

16. ADDITIONS/DELETIONS:

- 16.1. The County reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. Fairfax County and the Contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

17. CANCELLATION OF ORDERS:

- 17.1. Purchases made under this contract are for readily available supplies. Time is of the essence in furnishing the items ordered. The County reserves the right to cancel the order and/or to refuse delivery if the items ordered are not furnished within the period of time specified in this contract.

18. EMERGENCY PURCHASES:

- 18.1. Should the Contractor be unable to furnish the required item within the period of time specified in the contract the County reserves the right to make emergency purchases from other sources.

SPECIAL PROVISIONS**19. SALES/DELIVERY TICKETS:**

- 19.1. Orders placed under this contract for delivery placed by PO, Procurement Card or for pick up by an authorized representative, shall be supported by the Contractor's Sales/Delivery Ticket. The Contractor's Sales/Delivery Ticket shall contain the following information:
1. Contractor's Name
 2. Purchase Order number
 3. Date of Purchase
 4. Itemized list of supplies furnished
 5. Quantity, unit price and extension of each item, and total, less any applicable trade discount in accordance with the Contract.
 6. Name of authorized representative ordering the supplies
 7. Name of Agency receiving the supplies.
- 19.2. In all instances, the Contractor will prepare a Sales/Delivery Ticket, whether delivery is made by the Contractor or pick up is made by a FCPS representative at the Contractor's place of business. The Contractor's Sales/Delivery Ticket will be signed, by the FCPS representative, with a copy being retained by the Contractor.

20. INVOICING PROCEDURE:

- 20.1. The Contractor shall submit a Summary Invoice once each month, listing the Sales/Delivery Ticket numbers covering deliveries made during the monthly billing period and submitted to the BILL TO address shown on the Purchase Order. The invoice must be accompanied by one copy of each signed Sales/Delivery Ticket.
- 20.2. The invoice shall contain the applicable Purchase Order number and the name of the Agency receiving the supplies. Payment will be made once each month.

21. ORDER OF PRECEDENCE:

- 21.1. In the event of conflict, the Acceptance Agreement and the Special Provisions of this solicitation shall take precedence over the General Conditions and Instructions to Bidders or any other contract document.

22. AUDIT:

- 22.1. The Contractor shall retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by the County of Fairfax, whichever is sooner. The County shall have full access to and the right to examine any of said materials during the retention period.

23. SUBCONTRACTING:

- 23.1. If one or more subcontractors are required, the Contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmbe.state.va.us>; local chambers of commerce and other business organizations.

SPECIAL PROVISIONS

- 23.2. As part of the contract award, the prime Contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

24. USE OF CONTRACT BY OTHER PUBLIC BODIES:

- 24.1. Reference Paragraph 75, General Conditions and Instructions to Bidders, Cooperative Purchasing: Bidders are advised that the resultant contract(s) may be extended, with the authorization of the Bidder, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your bid. (See Appendix B for sample listing).
- 24.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).
- 24.3. Other public bodies desiring to use this contract must make their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 24.4. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 24.5. Fairfax County shall not be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

25. NEWS RELEASES BY VENDORS:

- 25.1. As a matter of policy, the County does not endorse the products or services of a Contractor. A Contractor will not make news releases concerning any resultant contract from this solicitation without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

26. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 26.1. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Office of Equity and Employee Relations at 571-423-3070, HRequity&employeerelations@fcps.edu or TRS at 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.
- 26.2. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County

SPECIAL PROVISIONS

programs, activities and services. Fairfax County government Contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.

27. HIPAA COMPLIANCE:

- 27.1. Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor will be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.
- 27.2. Further information regarding HIPAA Compliance is available on the County's website at <http://www.fairfaxcounty.gov/HIPAA>.

28. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

- 28.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

29. BACKGROUND CRIMINAL INVESTIGATION/IDENTIFICATION:

- 29.1. By the signature of its authorized official on the response to this solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents or subcontractors who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Contractor agrees to remove from the contract any employee, agent or subcontractor who has been determined by the School Board to be disqualified from service due to such convictions or the failure to truthfully report such convictions.
- 29.2. The Contractor shall immediately notify the FCPS contract administrator if any Contractor or employee of said Contractor providing services under the contract is arrested or indicted as a defendant in Virginia or any other jurisdiction. FCPS reserves the right to require that the employee be suspended from working on the contract until the charge(s) is adjudicated. This requirement does not apply to minor traffic violations, not requiring the appearance of the employee in court, unless the charge includes the illegal possession, distribution, use or influence of drugs or alcohol.

SPECIAL PROVISIONS

- 29.3. Due to enhanced security measures, Contractor employees/representatives are required to have photo identification and be able to present same upon request. Contractor employees/representatives shall report to the appropriate administrative and/or main office each time a site is visited. **All Contractor employees will be required to wear a company picture ID badge, or temporary name tag, issued by the County, clearly visible above the waist.** Contractor employees/representatives who arrive at the County/School facility without appropriate identification badges will immediately be dismissed from the job site.
- 29.4. Failure to comply with the above requirements may result in termination of the contract.

TECHNICAL SPECIFICATIONS

1. PROGRAM OVERVIEW AND SERVICES:

- 1.1. The Contractor shall provide Fairfax County Public Schools (FCPS) Family and Early Childhood Education Program/Head Start (FECEP/HS) with nutritious breakfast, lunches and snacks for:
- Approximately 800 children each academic year from September to June for 180 days.
 - Approximately 35 days during the summer months of July and August to service approximately 30 – 60 children.

Serving children ages one (1) years to five (5) years per day using quality food that meets all of the USDA Child and Adult Care Food Program (CACFP) requirements. These CACFP requirements are available at the following links:

- <http://www.ecfr.gov/cgi-bin/text-idx?SID=362e8133296534578af2a463b229fd5f&node=7:4.1.1.1.5&rgn=div5>
- The CACFP meal pattern requirements are available at: <http://www.fns.usda.gov/cacfp/meals-and-snacks>

The Child and Adult Care Food Program (CACFP) Meal Patterns for Breakfast, Lunch, and Snack designed for ages three (3) years to five (5) years shall be implemented program wide.

- 1.2. Contractor shall meet quarterly with FCPS Head Start Program Nutrition Services Specialist or other designated staff to plan and discuss services for the upcoming quarters, as required.

2. FOOD LAWS, STANDARDS AND SAFETY:

- 2.1. All products specified herein shall be processed, packaged, and delivered in accordance with the Virginia Health Department, U.S. Department of Agriculture regulations, and the Federal Food, Drug, and Cosmetic Act requirements and regulations promulgated there under.
- 2.2. All meals are to be prepared and packaged adhering to sanitary conditions under the supervision of a Certified Food Manager (CFM) and adhering to Fairfax County Health Department standards in insulated containers/carriers to keep hot food hot and cold food cold prior to serving. FCPS kitchens, cooling appliances and heating appliances are not available to assist in keeping food at appropriate temperatures.
- 2.3. Contractor shall transport all hot food items in food storage containers that will maintain a hot temperature of 135 degrees Fahrenheit or above and all cold food items at a cold temperature of 41 degrees Fahrenheit or below.
- 2.4. Contractor shall deliver all hot meals in food storage containers with an overlay that should have an air-tight closure, be of non-toxic material, and capable of withstanding hot temperatures of 135 degrees Fahrenheit or above and all cold containers overlay need to be plastic or paper and non-toxic containers that will maintain a cold temperature of 40 degrees Fahrenheit or below for a minimum of 24 hours. Classrooms do not have access to any food service equipment. Any food service appliances, such as refrigerators, must be furnished and maintained by the Contractor.
- 2.5. Delivery drivers must take temperatures of food items upon delivery to the classroom. The Teaching Team will record the temperatures onto the receipt while inspecting the quality of food items delivered to the classroom to ensure compliance with the requirements and specifications of the contract.

TECHNICAL SPECIFICATIONS

- 2.6. All items covered by this contract shall be packaged and labeled in accordance with industry approved trade practices in sturdy and clean containers.
- 2.7. The Contractor shall ensure compliance with all applicable federal, state, and local health and sanitation requirements at all times.
- 2.8. Meals served under the contract shall conform to the CACFP guidelines:
 - Standardized recipes that include the yield, planned serving size and component contribution for mixed dishes, Child Nutrition (CN) labels or signed product formulation sheets must be provided to the FECEP/HS Program at the start of the contract and updated throughout the year, as necessary.
 - Manufacturer labels, ingredient lists, and nutrient analysis will be provided, to FECEP/HS to complete modified menus for children with special dietary needs.
 - Manufacturer labels, ingredient lists, and nutrient analysis will be provided, to FECEP/HS to complete modified menus for children with special dietary needs.
 - Follow the CACFP meal patterns established by the USDA (7 CFR 226.20).

3. INSPECTION, REFERENCES AND SUPERVISION:

- 3.1. An authorized representative of the County of Fairfax or the Commonwealth of Virginia shall have the right to inspect the premises, facilities, and processing methods for producing items covered under this contract prior to award and without any notice at any time during the contract period, including the right to be present during preparation and delivery of meals, snacks, and any other products and services related to the requirements and specifications of the contract. Standard tests may be made for any items delivered for insuring satisfactory contractor performance.
- 3.2. The contractor must provide copies of Food Establishment Inspection Reports from the past three (3) years from the county in which their business resides.
- 3.3. The contractor must provide references from two (2) separate organizations or companies where such services have been performed. Must be similar in size and scope.
- 3.4. All items delivered must be in strict accordance with the specifications contained herein and may be subject to test by the Family and Early Childhood Education Program/Head Start staff, and the Virginia Department of Health, conducted on a random sampling basis during the life of the contract.
- 3.5. The Contractor shall provide management supervision at all times and maintain constant quality control inspections to check for portion size, appearance and packaging in addition to quality control of products related to this contract

4. COMMUNICATION OF FOOD RECALLS:

- 4.1. The Contractor shall have a process in place to effectively respond to food recalls. The process shall include accurate and timely notification to FCPS FECEP/HS and assurance that recalled products are identified and removed from the site locations in the most expedient manner.
- 4.2. The Contractor shall either issue a credit or deliver a comparable substitute, at FCPS's discretion.

TECHNICAL SPECIFICATIONS

- 4.3. All cost associated with the product recall, which include but are not limited to transportation and handling cost, shall be borne by the contractor.

5. **COMPLIANCE:**

- 5.1. FCPS FECEP/HS reserves the right to inspect and determine the quality of food delivered and reject any meals which do not comply with the requirements and specifications of the contract.
- 5.2. The Contractor shall not be paid for meals which are delivered outside of the agreed upon delivery time (unless exigent circumstances occur and are communicated by phone to the authorized FECEP/HS Program representative), are spoiled or unwholesome at the time of delivery, or do not otherwise meet the requirements contained in the contract (7CFR 226.6).
- 5.3. In the instance that food does not meet the appropriate temperatures upon delivery, the Contractor will replace the food for an alternate that meets the meal patterns, the same day, within 20 minutes of meal time. If food is unable to be replaced in a timely manner, the Contractor will not charge the price of the meal to FECEP/HS.
- 5.4. In the instance that food does not meet quality requirements (rotten, molded, bruised, etc), a replacement must be provided prior to the time the meal is served. If any shelf-stable food items are used in replacement, the shelf-stable food items must be replenished within 24 hours. If shelf-stable food is not replaced within 24 hours, and other meals are affected and do not meet the meal pattern, the Contractor will be responsible for the cost of the meal.

6. **MENU REQUIREMENTS AND MEAL MODIFICATIONS:**

- 6.1. Contractor shall provide meals that are ethnically and culturally diverse, including the option of vegetarian meals. Vegetarian meals and snacks should follow the CACFP meal patterns and provide an appropriate and equivalent substitute for protein.
- 6.2. Referenced CACFP has peanut/pork options. MEALS PROVIDED FOR FECEP/HS SHALL BE PEANUT/NUT AND PORK FREE.
- 6.3. Contractor shall modify the texture and consistency of the foods, as needed, for children with special dietary needs, children with disabilities, and for children ages one (1) to three (3) (45CFR 1304.23(b)(1); FNS Instruction 783-2 Accommodating Children with Special Dietary Needs). Contractor will be notified by email and modifications will need to be implemented within 48 hours after notification by email.
- 6.4. Contractor shall provide a milk substitute that meets CACFP nutritional requirements for those children with a medical or special dietary need (CACFP 21-2011-Revised: Child Nutrition Reauthorization 2010: Nutrition Requirements for Fluid Milk and Fluid Milk Substitutions). Substitutions for menus for children meeting any special dietary need or disability must be made on a case by case basis. Food substitutions for modified menus can only be made in a partnership with the FECEP/HS Registered Dietitians.
- 6.5. Contractor shall only provide ½ pints of milk to complete the meal pattern (Appendix B). No substitutions will be accepted. Contractor shall also not include milk with snack meals, despite being a part of the CACFP snack meal pattern.
- 6.6. Contractor shall not substitute juice as the fruit component for any meals.
- 6.7. Contractor shall provide cereals in individually packed containers only.

TECHNICAL SPECIFICATIONS

- 6.8. Written request of menu changes by FECEP/HS must be incorporated into the menu within 45 calendar days.
- 6.9. Shelf-stable food items adhering to the breakfast meal pattern must be provided to each classroom in case of school closings, power outages, or delays due to inclement weather. The shelf-stable breakfast will be stored in the classroom and used and replenished, as needed, within 24 hours.

7. **MEAL SUPPLIES AND UTENSILS:**

- 7.1. Contractor shall provide the following disposable items in support of "family style meals". In the FECEP/HS classrooms:
 - Napkins
 - Plates/Small Bowls/Trays for child-sized
 - Forks/Spoons/Knives for child-sized serving utensils known as (spoodles)
 - Serving Spoons and Tongs (for FECEP/HS classroom teachers to serve the children)
 - Straws
 - Food Service Gloves
 - Condiments (if appropriate)

FECEP/HS has the right to request additional non-food items that are necessary for meals to be eaten and or served.

Contractor must provide FECEP/HS approved child-sized serving utensils for the children to serve themselves food in a family style manner or use the FECEP/HS child-size serving utensils, serving spoons, and tongs. If using the FECEP/HS child-size serving utensils, contractor must collect, wash, and sanitize daily and return to the classroom for daily use (reference 7.2.).

It is the Contractor's discretion to determine what type of disposable supply item they would like to provide the children to eat out of on a daily basis. In general, there may be times that a bowl is more appropriate or plate is more appropriate depending on the menu and the food items being served.

Serving Bowls must be provided for daily use in the classroom in support of the Family Style Meals. It is the Contractor's choice whether they want to use disposable or use the FECEP/HS plastic reusable ones (reference 7.2.).

- 7.2. Contractor shall provide disposable food containers on a weekly basis that can be used to serve and eat "family-style meals" and not individually pre-packaged containers for individual use. FECEP/HS has plastic, reusable food containers that may be used to serve "family-style meals". These can be provided to the contractor for use. Contractor shall pick-up, wash, sanitize and return the reusable food containers the next day. If using the FECEP/HS reusable food containers a written copy of the Contractor's sanitation regulations and procedures for cleaning food containers, utensils, equipment and other items used in the preparation, packaging and storage of food items must be provided upon request. If the Contractor chooses to use FECEP/HS utensils; we require the contractor provide disposable "back-up" food containers.

TECHNICAL SPECIFICATIONS

8. DELIVERY PROCEDURES TO SITE LOCATIONS:

- 8.1. Deliver breakfast, lunch and snacks to the FCPS FECEP/HS classrooms Monday through Friday based on each individual school site schedule. Delivery of food must be made only to classrooms and received and signed by a FECEP/HS Teaching Team Member or FECEP/HS Central Staff member. The time of delivery will vary by school and will be provided to the Contractor prior to first day of service. Food will be delivered at the same time each day, barring unforeseen circumstances. Contractor is not permitted to use any FCPS kitchen or kitchen equipment. The weekly delivery schedule of meals are as follows:
- Monday- Lunch, Snack and Breakfast for Tuesday.
 - Tuesday- Lunch, Snack and Breakfast for Wednesday.
 - Wednesday- Lunch, Snack and Breakfast for Thursday.
 - Thursday- Lunch, Snack and Breakfast for Friday
 - Friday- Lunch, Snack, and Breakfast for Monday
- 8.2. FCPS FECEP/HS follows the Fairfax County Public Schools inclement weather policy. If schools are closed due to inclement weather, the centers are closed and no meals shall be delivered. If the Fairfax County Public Schools are delayed due to inclement weather, the FECEP/HS classrooms will open and follow the delayed schedule. If FCPS is on delayed schedule, the Contractor shall deliver meals within 90 minutes of the delayed opening. Breakfast may be served if on a delayed schedule based on the children's needs. The Contractor will be responsible for checking the FCPS website (www.fcps.edu) for school closures or delays or subscribe to the FCPS Keep in Touch System at <https://signup.blackboardconnect.com/fcps/Default.aspx>.
- 8.3. Contractor shall deliver meals based on each school's schedule. A list of classroom locations for Area 1 are incorporated in Appendix B. A copy of each school schedule and of FCPS holidays will be provided to the Contractor after contract award. If changes to the FCPS master schedule occur; the Early Childhood Nutrition Services Specialist or other designated nutrition staff speaking on behalf of the Nutrition Services Specialist will contact the Contractor within 15 business days by email.
- 8.4. FECEP/HS will be alerted by phone or email immediately of any delays in deliveries, changes in menus or any other pertinent information affecting the meal services.
- 8.5. Upon entry into a school, Contractor delivery driver must sign in with their complete name at the front desk and state they are delivering food to the FECEP classrooms. Deliveries are not to be left in the office or any other location on the premise that is not the designated FECEP/HS classroom. All meals and related supplies delivered shall be unloaded and any debris associated with the delivery shall be removed from the site location prior to the driver leaving.
- 8.6. The Contractor shall provide transportation vehicles and equipment to be used in the delivery of food. The Contractor shall be responsible for maintenance, fuel, insurance, and equipment for transportation.

9. RECORDKEEPING:

- 9.1. Contractor shall submit a daily meals receipt and checklist to the FECEP/HS Program teaching team receiving the meals, which include the following information:
- Number of meals.
 - Type of meals delivered (breakfast, lunch, snack).
 - Number of serving of each meal delivered.

TECHNICAL SPECIFICATIONS

- Menu items.
- Date of service line and signature line for persons delivering and receiving meals.
- Time and exit temperature of hot items (from contractor's kitchen).
- Time and exit temperature of cold items (from contractor's kitchen).
- Line to record temperature and the time of delivery of hot items.
- Line to record temperature and the time of delivery of cold items.

9.2. Meals receipt and checklist must be on non-carbon copy paper (NCR) if Contractor desires a copy of meal receipts.

10. FIELD TRIPS:

- 10.1. Contractor shall provide individually pre-packaged containers and or bag lunches when requested by FCPS FECEP/HS staff for field trips. Contractor will be notified within seven (7) business days to provide service for field trip outings.
- 10.2. Contractor must provide coolers/carriers and ice/ice packs for keeping meals cold during field trips. Per CACFP meal pattern guidelines (Appendix B), milk must be provided for field trips.

11. CLASSROOM NUTRITION EDUCATION:

- 11.1. FECEP/HS classrooms conduct nutrition education activities in the classroom throughout the school year. The contractor may be asked to support or provide items in support of the activities or events associated with nutrition education.

12. NOTIFICATION:

- 12.1. The Contractor must provide the FECEP/HS a formal written notice of any of the following actions during the contract period:
- Any product substitution;
 - A product change due to manufacturing merger;
 - A plant change is made;
 - Product is altered in anyway;
 - Product packaging has changed;
 - Contractor for contract administration has changed

13. BUY AMERICAN PROVISION

- 13.1. Section 104 (d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the NSLP, SBP, or any of the Child Nutrition Programs in the contiguous United States with non-profit school food services account funds to purchase, to the maximum extent practicable, domestic commodities or products. The Contractor shall comply with this requirement.

14. ITEMS TO BE FACTORED INTO THE PRICING SCHEDULE (APPENDIX B):

- 14.1. Total price of meals must include cost of the items listed in numbers 7.1., 7.2. ,10.1.and 10.2.

TECHNICAL SPECIFICATIONS**15. FAIRFAX COUNTY PUBLIC SCHOOLS RESPONSIBILITIES:**

- 15.1. FCPS FECEP/HS will provide the following:
- A list of program staff to serve as technical oversight and points of contact for service (These will be provided at time of contract award).
 - The number of required meals will be provided to the Contractor after contract award. This number is expected to remain fixed throughout the year. If this number changes, the Contractor will be notified immediately.
 - An activity calendar each year for the period of September through August for the FCPS FECEP/ HS Program.
- 15.2. Upon delivery of food to the classroom, the Teaching Team will check all food items, record temperature of meal items, fill out the Contractor receipt, and keep receipts to submit to FECEP/HS.
- 15.3. If delivered food does not meet appropriate temperatures, the teaching team will inform the delivery driver and the teaching team will contact the designated FECEP/HS staff member. The Contractor shall provide in writing to FECEP/HS how the issue will be fixed and not occur in the future.
- 15.4. FECEP/HS is responsible for obtaining all medical statements, parent letters and any other necessary paperwork in support of any modification to menus, snacks or milks for individual children (45CFR 1304.23(b)(1); FNS Instruction 783-2 Accommodating Children with Special Dietary Needs).
- 15.5. Fairfax County Public Schools Office of Family and Early Childhood Education Program/Head Start will adhere to all procurement regulations under 7 CFR226.21 and 7 CFR 226.22.
- 15.6. The FECEP/HS Program Registered Dietitians are responsible for ensuring that all menus and modified menus meet the CACFP Meal Patterns. If an issue is identified and the contractor is informed of not meeting the meal pattern, the contractor must make changes by the next business day. The contractor must also credit the FECEP/HS Program if any non-approved meals have been served.

COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. AUTHORITY-The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. DEFINITIONS-

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONSULTANT SERVICES: Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

OPEN MARKET PROCUREMENT (OMP): A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000.

PROFESSIONAL SERVICES: Any type of professional service performed by an independent Contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required. (Reference paragraph 24, General Conditions and Instructions to Bidders).

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an Open Market Procurement (OMP), or telephone calls to prospective bidders.

STATE: Commonwealth of Virginia.

CONDITIONS OF BIDDING

3. BID FORMS-Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope or package. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. LATE BIDS & MODIFICATIONS OF BIDS-

- a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:
 1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or
 2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.
- b. If an emergency or unanticipated event or closing interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, the due date/time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal County business operations resume
- c. The official time used for receipt of bids/modifications is the Bid Clerk's time and date stamp clock located in the Department of Purchasing and Supply Management. "No other clocks, calendars or timepieces are recognized. All bidders are responsible to ensure all bids/modifications are received prior to the scheduled due date/time.
- d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

5. WITHDRAWAL OF BIDS-

- a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- b. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:
 1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.
 2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
 - d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
 - e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
 - f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
 - g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.
- 6. ERRORS IN BIDS**-When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
- 7. MAILING OF BIDS** – All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted in a sealed envelope or package identified with the solicitation number, title, and bidders name and address clearly marked on the outside of such envelope or package.
- 8. COMPLETENESS**-To be responsive, a bid must include all information required by the solicitation.
- 9. ACCEPTANCE OF BIDS/BINDING 90 DAYS**-Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
- 10. CONDITIONAL BIDS**-Conditional bids are subject to rejection in whole or in part.
- 11. BIDS FOR ALL OR PART**-Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
- 12. AREA BIDS**-For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
- 13. TIME FOR RECEIVING BID**-Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.
- 14. BID OPENING**-All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: <http://www.fairfaxcounty.gov/dpsm/bidtab.htm>.
- Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.
- 15. OMISSIONS & DISCREPANCIES**-Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.
- Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
- 16. RESPONSE TO SOLICITATIONS**-In the event a vendor cannot submit a bid on a solicitation; he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.
- 17. BIDDER INTERESTED IN MORE THAN ONE BID**-If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

18. TAX EXEMPTION-The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

19. PROHIBITION AGAINST UNIFORM PRICING-The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

SPECIFICATIONS

20. QUESTIONS CONCERNING SPECIFICATIONS-Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

21. BRAND NAME OR EQUAL ITEMS-Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

22. FORMAL SPECIFICATIONS-When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. FEDERAL SPECIFICATIONS-Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

AWARD

24. AWARD OR REJECTION OF BIDS-The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
- k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
- b. General Conditions and Instructions to Bidders,
- c. Special Provisions and Specifications,
- d. Pricing Schedule,
- e. Any Addenda/Amendments/Memoranda of Negotiations

26. TIE-BIDS – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

27. PROMPT PAYMENT DISCOUNT-

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer.

28. INSPECTION-ACCEPTANCE-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

29. DEFINITE BID QUANTITIES-Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

30. REQUIREMENT BID QUANTITIES-On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

31. TERMINATION OF CONTRACTS-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

32. TERMINATION FOR CONVENIENCE-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

33. TERMINATION OF CONTRACT FOR CAUSE-

- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

34. CONTRACT ALTERATIONS-No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

36. FUNDING-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

37. DELIVERY/SERVICE FAILURES-Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

38. NON-LIABILITY-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

39. NEW GOODS, FRESH STOCK-All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

40. NON-DISCRIMINATION-During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

41. SMALL AND MINORITY BUSINESS UTILIZATION-

- a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
- c. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

42. GUARANTEES & WARRANTIES-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

43. PRICE REDUCTION-If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. **FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT.** Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent.

The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

44. CHANGES-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

45. PLACING OF ORDERS-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

46. SHIPPING INSTRUCTIONS - CONSIGNMENT-Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

47. RESPONSIBILITY FOR SUPPLIES TENDERED-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. INSPECTIONS-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

49. COMPLIANCE-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

50. POINT OF DESTINATION-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

51. ADDITIONAL CHARGES-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

52. METHOD AND CONTAINERS-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

53. WEIGHT CHECKING-Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

54. DEMURRAGE AND RE-SPOTTING-The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

55. REPLACEMENT-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

56. PACKING SLIPS OR DELIVERY TICKETS-All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,
7. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BILLING

57. BILLING-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

58. PAYMENT-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

59. PARTIAL PAYMENTS-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

61. GENERAL GUARANTY-Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

62. SERVICE CONTRACT GUARANTY-Contractor agrees to:

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

63. INDEMNIFICATION-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

64. OFFICIALS NOT TO BENEFIT-

- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

65. LICENSE REQUIREMENT-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

66. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

67. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

68. VIRGINIA FREEDOM OF INFORMATION ACT-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
- d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

BIDDER/CONTRACTOR REMEDIES

69. INELIGIBILITY-

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
 - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
 5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 6. The Contractor has abandoned performance or been terminated for default on any other Fairfax County project;
 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

72. PROTEST OF AWARD OR DECISION TO AWARD-

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

73. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

74. LEGAL ACTION-No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

75. COOPERATIVE PURCHASING-The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

76. PROFESSIONAL AFFILIATION-The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

77. DRUG FREE WORKPLACE-During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subContractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

78. IMMIGRATION REFORM AND CONTROL ACT: Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

APPROVED:

/S/ David P. Bobzien
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

The following documents which are included in this Solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- A. County of Fairfax Cover Sheet (DPSM30)
- B. Special Provisions & Specifications
- C. Technical Specifications
- D. Appendix A (General Conditions)
- E. Appendix B (Pricing Schedule, Child Care Meal Patterns (CACFP) SCC, BPOL Form, Certifications of Debarment, Certification of Ethics, Sample Jurisdiction Listing, Business Classification Schedule, Area 1 Meal Services Site Locations and Confidentiality Addendum)

CONTACT INFORMATION

1. Contract Administration

Designated central point of contact for questions related to the solicitation and post award matters.

NAME: _____ TITLE: _____
ADDRESS: _____ PHONE: (____) _____
EMAIL ADDRESS: _____

2. Contract ordering

In the event your firm receives a contract as a result of this Invitation for Bid, please provide the designated central point of contact we may reach during the period of the contract term.

NAME: _____ TITLE: _____
ADDRESS: _____ PHONE: (____) _____
EMAIL: _____

3. Accounting Administration

In the event your firm receives a contract as a result of this Invitation for Bid, please provide the designated central point of contact we may reach during the period of the contract term for questions related to accounting matters.

NAME: _____ TITLE: _____
ADDRESS: _____ PHONE: (____) _____
EMAIL ADDRESS: _____

Pricing Schedule

Item No.	Item Description	Estimated Quantities Per Day	UOM	Unit Price	Extension
1.	Child Breakfast age 1-5	800	EA	\$	\$
2.	Vegetarian Breakfast	100	EA	\$	\$
3.	Modified Breakfast for food allergy/diet restriction	100	EA	\$	\$
4.	Shelf Stable Breakfast (for emergency uses)	800	EA	\$	\$
4.	Child Lunch age 1-5 (to include field trip meals)	800	EA	\$	\$
5.	Vegetarian Lunch	100	EA	\$	\$
6.	Modified Lunch for food allergy/diet restriction	100	EA	\$	\$
7.	Child Snack age 1-5	800	EA	\$	\$
8.	Vegetarian Snack	100	EA	\$	\$
9.	Modified Snack for food allergy/diet restriction	100	EA	\$	\$
Total Amount of Bid					\$

Item No.	Item Description	Estimated Quantities Per Classroom Annually	UOM	Percentage Discount
10.	Food items in support of classroom activities	<u>10</u>	<u>EA</u>	% _____
<ul style="list-style-type: none"> • PRICE IS TO BE INCLUSIVE OF ALL COSTS. NO ADDITIONAL CHARGES ARE ALLOWED. • PLEASE REFER TO CHILD CARE MEAL PATTERN IN APPENDIX B FOR GUIDANCE. • QUANTITY IS APPROXIMATE AND SUBJECT TO CHANGE. • TOTAL PRICE OF MEALS MUST INCLUDE COST OF THE ITEMS LISTED IN 7.1., 7.2., 10.1 and 10.2. (Reference Technical Specifications 15.1) . 				

CHILD CARE MEAL PATTERN

Breakfast Select All Three Components for a Reimbursable Meal	
Food Components	Ages 1-5*
1 milk¹ fluid milk	3/4 cup
1 fruit/vegetable juice, ² fruit and/or vegetable	1/2 cup
1 grains/bread³ bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup
¹ Milk served must be low-fat (1%) or non-fat (skim). Milk must be whole milk for children ages 1yr. ² Fruit or vegetable juice must be full-strength. ³ Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified. * Textural and consistency modifications may be needed when providing meals to classrooms serving ages 1-3yrs.	

CHILD CARE MEAL PATTERN

Lunch or Supper Select All Four Components for a Reimbursable Meal	
Food Components	Ages 1-5*
1 milk¹ fluid milk	3/4 cup
2 fruits/vegetables juice, ² fruit and/or vegetable	1/2 cup
1 grains/bread³ bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup
1 meat/meat alternate meat or poultry or fish ⁴ or alternate protein product or cheese or egg or cooked dry beans or peas or peanut or other nut or seed butters or nuts and/or seeds ⁵ or yogurt ⁶	1½oz. 1½ oz. 1½ oz. 3/4 3/8 cup 3 Tbsp. 3/4 oz. 6 oz.
¹ Milk served must be low-fat (1%) or non-fat (skim). Milk must be whole milk for children ages 1yr. ² Fruit or vegetable juice must be full-strength. ³ Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified. ⁴ A serving consists of the edible portion of cooked lean meat or poultry or fish. ⁵ Nuts and seeds may meet only one-half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement. ⁶ Yogurt may be plain or flavored, unsweetened or sweetened. * Textural and consistency modifications may be needed when providing meals to classrooms serving ages 1-3yrs.	

CHILD CARE MEAL PATTERN

Snack	
Select Two of the Four Components for a Reimbursable	
Food Components	Ages 1-5*
1 milk¹ fluid milk	1/2 cup
1 fruit/vegetable juice, ² fruit and/or vegetable	1/2 cup
1 grains/bread³ bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup
1 meat/meat alternate meat or poultry or fish ⁴ or alternate protein product or cheese or Egg ⁵ or cooked dry beans or peas or peanut or other nut or seed butters or nuts and/or seeds or yogurt ⁶	1/2 oz. 1/2 oz. 1/2 oz. 1/2 1/8 cup 1 Tbsp. 1/2 oz. 2 oz.

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The bidder:

☐ is a corporation or other business entity with the following SCC identification number:

_____ **-OR-**

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids:

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia ☐ Yes ☐ No
 Fairfax County ☐ Yes ☐ No
- Date business began/will begin work in Fairfax County _____

Provide a detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County.

Signature

Date

For Office Use Only:

- Company name and address: _____

- Amount of Contract Award \$ _____
- Fairfax County Department : _____
- Department Contact _____ Phone No. _____
- Company Contact _____ Phone No. _____
- Nature of business _____

Complete and return this form or a copy of your current Fairfax County Business License with your bid. Contract award may not be made without it.

CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

Printed Name of Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Address: _____

City/State/Zip: _____

SSN or TIN No: _____

Certification Regarding Ethics in Public Contracting

In submitting this bid and signing below, Bidder certifies the following in connection with a bid, proposal, or contract:

Check one:

☐

1. I have not given any payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to any public employee or official who has official responsibility and authority for procurement transactions.

☐

2. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, and in exchange I received consideration of substantially equal or greater value.

☐

3. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, but in exchange I have not received consideration of substantially equal or greater value.

If #2 above is selected, please complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value:

Description of the consideration received in exchange and its value:

Printed Name of Bidder/Offeror Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

This certification supplements but does not replace the requirements set forth in paragraph 64 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation.

Sample Listing of Local Public Bodies

REFERENCE PARAGRAPH 24 OF THE SPECIAL PROVISIONS,"USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended, a "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Maryland-National Capital Park & Planning Commission
	Alexandria Sanitation Authority		Maryland Department of Transportation
	Alexandria, Virginia		Metropolitan Washington Airports Authority
	Arlington County, Virginia		Metropolitan Washington Council of Governments
	Arlington Public Schools, Virginia		Montgomery Community College
	Bladensburg, Maryland		Montgomery County, Maryland
	Bowie, Maryland		Montgomery County Public Schools, MD
	Charles County Public Schools, MD		Northern Virginia Community College
	College Park, Maryland		Omni Ride
	Culpeper County, Virginia		Potomac & Rappahannock Trans. Commission
	District of Columbia		Prince George's County, Maryland
	District of Columbia Courts		Prince George's County Public Schools, MD
	DC Water and Sewer Authority		Prince William County Public Schools, VA
	District of Columbia Public Schools		Prince William County, Virginia
	Fairfax County Water Authority		Prince William County Service Authority
	Fairfax, Virginia (City)		Rockville, Maryland
	Falls Church, Virginia		Spotsylvania County Schools, Virginia
	Fauquier County, Virginia		Stafford County, Virginia
	Fauquier County Schools, Virginia		Takoma Park, Maryland
	Frederick City, Maryland		Upper Occoquan Sewage Authority
	Frederick County Maryland		Vienna, Virginia
	Gaithersburg, Maryland		Virginia Railway Express
	Greenbelt, Maryland		Washington Metropolitan Area Transit Authority
	Herndon, Virginia		Washington Suburban Sanitary Commission
	Leesburg, Virginia		Winchester, Virginia
	Loudoun County Sanitation Authority		Winchester Public Schools
	Loudoun County, Public Schools, VA		
	Loudoun County, Virginia		
	Manassas, Virginia		
	Manassas City Public Schools, Virginia		
	Manassas Park, Virginia		

Complete and return this form with your bid. Contract award may not be made without it.

Vendor Name

BUSINESS CLASSIFICATION

DEFINITIONS

Small Business – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

Minority-Owned Business - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

Woman-Owned Business – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPSM 30). This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc.

Fairfax County Public Schools Office of Early Childhood

Area 1 Meal Services Site Locations

Please Note: Additional Site Locations or Classrooms May Be Altered

Schools	Address	City	State	Zip
Bonnie Brae	5420 Sideburn Road	Fairfax	VA	22032
Brookfield	4200 Lees Corner Road	Chantilly	VA	20151
Camelot	8100 Guinevere Drive	Annandale	VA	22003
Cardinal Forest	8600 Forrester Blvd	Springfield	VA	22152
Centre Ridge	14400 New Braddock Rd.	Centreville	VA	20121
Centreville	14330 Green Trails Blvd	Centreville	VA	20121
Chantilly HS	4201 Stringfellow Road	Chantilly	VA	20151
Clearview	12635 Builders Road	Herndon	VA	20170
Cunningham Park	1001 Park Street	Vienna	VA	22180
Dogwood 1	12300 Glade Drive	Reston	VA	20191
Dogwood 2	12300 Glade Drive	Reston	VA	20191
Dogwood 3	12300 Glade Drive	Reston	VA	20191
Dranesville	1515 Powells Tavern Place	Herndon	VA	20170
Fairhill	3001 Chichester Lane	Fairfax	VA	22031
Forest Edge	1501 Becontree Lane	Reston	VA	20190
Freedom Hill	1945 Lord Fairfax Road	Vienna	VA	22182
Halley	8850 Cross Chase Circle	Fairfax Station	VA	22039
Herndon	630 Dranesville Road	Herndon	VA	20170
Hunters Woods 1	2401 Colts Neck Road	Reston	VA	20191
Hunters Woods 2	2401 Colts Neck Road	Herndon	VA	20191
Hutchison 1	13209 Parcher Ave.	Herndon	VA	20170
Hutchison 2	13209 Parcher Ave.	Herndon	VA	20170
Hutchison 3	13209 Parcher Ave.	Herndon	VA	20170
Lake Anne	11510 North Shore Drive	Reston	VA	20190
London Towne	6100 Stone Road	Centreville	VA	20120
Lorton Station	9298 Lewis Chapel Road	Lorton	VA	22079
McNair 1	2499 Thomas Jefferson Drive	Herndon	VA	20191
McNair 2	2499 Thomas Jefferson Drive	Herndon	VA	20191
Mosby Woods	9819 Five Oaks Road	Fairfax	VA	22031
Newington Forest	8001 Newington Forest Avenue	Springfield	VA	22153
Poplar Tree	13440 Melville Lane	Chantilly	VA	20151
Providence	3616 Jermantown Road	Fairfax	VA	22030
Robinson	5035 Sideburn Road	Fairfax	VA	22032
Saratoga 1	8111 Northumberland Road	Springfield	VA	22153
Saratoga 2	8111 Northumberland Road	Springfield	VA	22153
Virginia Run	15450 Martins Hundred Drive	Centreville	VA	20120
Clearview 1 Early Head Start	12635 Builders Road	Herndon	VA	20170
Clearview 2 Early Head Start	12635 Builders Road	Herndon	VA	20170
Dogwood 1 Early Head Start	12300 Glade Drive	Reston	VA	20191

CONFIDENTIALITY ADDENDUM

THIS ADDENDUM, executed and effective as of the ____ day of _____, 2016, by and between _____), a corporation organized and existing under the laws of Oregon (the "Company"), and the **FAIRFAX COUNTY SCHOOL BOARD**, a public body corporate and politic organized and existing under the laws of the Commonwealth of Virginia (the "School Board"), recites and provides as follows.

Recitals

The Company and the School Board are parties to a certain agreement entitled _____" of even date herewith (the "Agreement"). In connection with the execution and delivery of the Agreement, the parties wish to enter into this Addendum in order to clarify and make certain modifications to the terms and conditions set forth therein.

The Company and the School Board agree that the purpose of such terms and conditions is to ensure compliance with the Family Educational Rights and Privacy Act (FERPA), including but not limited to (i) the identification of Company as an entity acting for the School Board in its performance of functions that a School Board employee otherwise would perform; and (ii) the establishment of procedures for the protection of confidential student records, including procedures regarding security and security breaches.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties agree as follows.

Agreement

The Agreement is amended hereby as follows:

1. The following provisions shall be deemed to be included in the Agreement:

Confidentiality Obligations Applicable to Certain FCPS Student Records. The Company hereby covenants and agrees that it shall maintain, in strict confidence and trust, all FCPS student records containing either (1) non-directory information of any kind, whether provided by or created for FCPS pursuant to this contract, or (2) directory information as to which the eligible student or his family has opted out of disclosure (collectively, "FCPS Confidential Student Records").

The Company shall cause each officer, director, employee and other representative who shall have access to FCPS Confidential Student Records during the term of the Agreement (collectively, the "Authorized Representatives") to maintain in strict confidence and trust all FCPS Confidential Student Records. The Company shall take all reasonable steps to insure that no FCPS Confidential Student Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for FCPS under the Agreement and have agreed to be bound by the terms of this Agreement or a Confidentiality Agreement (as defined below) executed pursuant hereto; (ii) are authorized representatives of FCPS, or (iii) are entitled to such FCPS Confidential Student Records from the Company pursuant to federal and/or Virginia law. The Company shall use FCPS Confidential Student Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement.

The Company shall: (i) designate one of its Authorized Representatives to be responsible for ensuring that the Company and its Authorized Representatives maintain the FCPS Confidential Student Records as confidential; (ii) train the other Authorized Representatives with regard to their

confidentiality responsibilities hereunder and pursuant to federal and Virginia law; (iii) maintain at all times a list of Authorized Representatives with access to FCPS Confidential Student Records; (iv) cause each Authorized Representative to execute a written covenant of confidentiality in substantially the form set forth on Exhibit A hereto (the "Confidentiality Agreement") prior to his or her performance of any services contemplated by the Agreement and shall deliver any and all such Confidentiality Agreements to the School Board upon request.

Other Security Requirements. The Company shall maintain all reasonable and customary technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of FCPS Confidential Student Records, including procedures to (i) restrict access to such records as described in the "Confidentiality" provision of this Addendum; (ii) establish user IDs and passwords as necessary to protect such records; (iii) protect all such user passwords from detection and unauthorized use; (iv) prevent hostile or unauthorized intrusion that could compromise confidentiality, result in data corruption, or deny service; (v) prevent and detect computer viruses from spreading to disks, attachments to e-mail, downloaded files, and documents generated by word processing and spreadsheet programs; (v) minimize system downtime; (vi) notify FCPS of planned system changes that may impact the security of FCPS Confidential Student Records; (vii) return or destroy FCPS Confidential Student Records that exceed specified retention schedules; (viii) permit periodic security audits by FCPS or designated third party using applicable regulations and industry best practice standards as benchmarks, and make commercially reasonable efforts to remediate the vulnerabilities discovered; (ix) in the event of system failure, enable prompt recovery of FCPS records.

In the event of a security breach, the Company shall (i) immediately take action to close the breach; (ii) notify FCPS within 24 to 48 hours of Company's first knowledge of the breach, the reasons for or cause of the breach, actions taken to close the breach, and identify the FCPS Confidential Student Records compromised by the breach; (iii) return compromised FCPS Confidential Student Records for review; (iv) provide communications on the breach to be shared with affected parties and cooperate with FCPS efforts to communicate to affected parties by providing FCPS with prior review of press releases and any communications to be sent to affected parties; (v) take all legally required, reasonable, and customary measures in working with FCPS to remediate the breach which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the disclosure; (vi) cooperate with FCPS by providing information, records and witnesses needed to respond to any government investigation into the disclosure of such records or litigation concerning the breach; and (vii) provide FCPS with prompt notice within 24 to 48 hours of notice or service on Company, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Company's handling of FCPS records of any kind, failure to follow security requirements and/or failure to safeguard confidential information. The Company shall provide satisfactory documentation of its compliance with the security requirements of this provision prior to performing services under the Agreement. The Company's compliance with the standards of this provision is subject to verification by FCPS personnel or its agent at any time during the term of the Agreement.

Applicability of Confidentiality and Security Provisions to Non-Confidential Records

To the extent that FCPS provides non-confidential information to Company under this Agreement, such as student records containing only directory information as to which no opt-out has been filed, de-identified student information, and FCPS records not pertaining to students, the Confidentiality and Security paragraphs shall not apply, *provided that* the notice obligation under subsection (viii) shall apply to lawsuits and investigations involving FCPS records of any kind.

Disposition of FCPS Confidential Student Records Upon Termination of Agreement

Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Company covenants and agrees that it promptly shall deliver to the School Board, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the School Board, all FCPS Confidential Student Records. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to FCPS Confidential Student Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the School Board, and shall maintain FCPS Confidential Student Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in FCPS Confidential Student Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Company or any of its officers, directors, employees, agents or representatives of the obligations of the Company or its Authorized Representatives under this provision or under a Confidentiality Agreement, as the case may be.

Certain Representations and Warranties. The Company hereby represents and warrants as follows: (i) the Company has full power and authority to execute the Agreement and this Addendum and to perform its obligations hereunder and thereunder; (ii) the Agreement and this Addendum constitute the valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the rights of creditors and general principles of equity; and (iii) the Company's execution and delivery of the Agreement and this Addendum and compliance with their respective terms will not violate or constitute a default under, or require the consent of any third party to, any agreement or court order to which the Company is a party or by which it may be bound.

Governing Law; Venue. Notwithstanding any provision contained in the Agreement to the contrary, (i) the Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles; and (ii) any dispute hereunder which is not otherwise resolved by the parties hereto shall be decided by a court of competent jurisdiction located in the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers effective as of the date first written above.

Company Name:

By: _____
Authorized Company Representative

FAIRFAX COUNTY SCHOOL BOARD

By: _____
Roger L. Ball, Director

Exhibit A

Covenant of Confidentiality

In connection with the performance by _____ (the "Company") of its obligations under that certain agreement with the Fairfax County School Board dated _____, 2016, as the same shall have been amended by that certain Addendum of even date therewith (the "Agreement"), the undersigned authorized representative of the Company (the "Authorized Representative"), for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby covenants and agrees as follows, with knowledge that the Fairfax County School Board is relying upon the statements set forth herein.

The Authorized Representative hereby covenants and agrees that he or she: (i) shall maintain in strict confidence and trust all records, reports and other documents or materials of any nature relating to the operations, students, families and employees of Fairfax County Public Schools (collectively, the "FCPS Confidential Student Records"); (ii) shall not disclose any FCPS Confidential Student Records to any person or entity who has not agreed to be bound by the terms of the Agreement, or a sworn statement executed pursuant thereto, unless the person or entity is an Authorized Representative of FCPS or is otherwise entitled to access to such FCPS Confidential Student Records pursuant to federal and/or Virginia law; (iii) shall use the FCPS Confidential Student Records solely for purposes related to and in furtherance of the performance by the Company of its obligations pursuant to the Agreement; (iv), upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, promptly shall deliver all FCPS Confidential Student Records to Fairfax County Public Schools; (v) shall continue to maintain as confidential all information obtained from FCPS Confidential Student Records after the expiration or termination of the Agreement.

IN WITNESS WHEREOF, the Authorized Representative has executed this Covenant of Confidentiality as of the ___ day of _____, 2016.

[Name]

[Address]

(____)____ - _____
[Telephone No.]